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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

United States of America,
Plaintiff,

v.

Dr. Henry T. Nicholas III,
Defendant.

CASE NO. SA CR 08-00140

SA CR 08-00139

RESPONSE TO GOVERNMENT'S
REPLY TO DEFENDANT'S NOTICE
OF RELATED CASES

1 On June 4, 2008, Dr. Henry T. Nicholas III, was charged by the grand
2 jury in two separate indictments, SA CR 08-139, and SA CR 08-140. In SA CR 08-
3 139, it is alleged that Dr. Nicholas committed various securities-related offenses in
4 connection with the administration of Broadcom Corporation's stock options
5 programs. In SA CR 08-140, it is alleged that Dr. Nicholas committed various drug-
6 related offenses. On June 10, 2008, Dr. Nicholas filed a notice that the two cases
7 are related under U.S. District Court, Central District of California General Order
8 No. 08-05, § 11.1, because both indictments "involve one or more defendants in
9 common, and would entail substantial duplication of labor in pretrial, trial, or
10 sentencing proceedings if heard by different judges." U.S. Dist. Ct., Central Dist. of
11 Calif. Gen. Order No. 08-05, § 11.1(b).

12 The Government has filed a Reply to Defendant's Notice of Related
13 Cases ("Reply"), broadly asserting that because the two cases pending against Dr.
14 Nicholas relate to different "factual underpinnings," Reply at 1, they are unrelated
15 under General Order No. 08-05. The plain language of the General Order clearly
16 demonstrates otherwise.

17 The General Order provides that cases are deemed related if one of two
18 criteria is met. The first criterion, set forth in §11.1(a), states that cases are related if
19 they "arise out of the same conspiracy, common scheme, transaction, series of
20 transactions or events." This criterion covers the relatedness of the "factual
21 underpinnings" that forms the basis of the Government's Reply. We agree with the
22 Government that the factual dissimilarities of the two indictments (one alleging
23 stock options offenses, and the other relating to drug offenses) likely means that this
24 criterion is not met. Indeed, §11.1(a) was nowhere mentioned in Dr. Nicholas's
25 Notice of Related Cases.

26 Instead, Dr. Nicholas's Notice was based on the second criterion by
27 which cases are deemed related, set forth in §11.1(b) of the General Order. See
28 Notice at 1. That criterion states that cases are related if they "involve one or more

1 defendants in common, and would entail substantial duplication of labor in pretrial,
 2 trial or sentencing proceedings if heard by different judges.”¹ This portion of the
 3 Order addresses the interests of judicial economy and administrative efficiency, not
 4 the relatedness of the “factual underpinnings” that are at the heart of the
 5 Government’s Reply. Indeed, the Government’s Reply does not even mention,
 6 much less confront, these efficiency interests. It is unclear why. It is inescapable
 7 that a substantial duplication of efforts – in pre-trial proceedings and at sentencing
 8 (in the event that should ultimately become necessary) – would result if Dr.
 9 Nicholas’s two cases proceeded before different judges.²

10 For the foregoing reasons, Dr. Nicholas asserts that the two cases
 11 pending against him are related cases under this Court’s General Order No. 08-05.
 12 Dr. Nicholas filed a written request on June 11, 2008, for a hearing on this issue, if
 13 needed.

14
 15 Respectfully Submitted,

16 DATED: June 12, 2008

17 WILLIAMS & CONNOLLY LLP

18 By: /XXXXX/

19 BRENDAN V. SULLIVAN, JR.
 20 Attorneys for Defendant

21
 22 ¹ The quotation of this criterion contained in the Government’s Reply contains what
 23 appears to be an inadvertent error. The Reply quotes §11.1(b) as requiring that the
 24 substantial duplication of labor result “in pretrial, trial **and** sentencing proceedings.”
 25 Reply at 1 (emphasis added). The General Order actually requires only that a
 26 duplication of labor would result in **one** of those three stages of the proceedings –
 27 “in pretrial, trial **or** sentencing proceedings if heard by different judges.” General
 28 Order §11.1(b) (emphasis added).

² One example of efficiencies realized from having the two cases before one Judge
 is apparent from the limited proceedings to date. The issues relating to detention,
 conditions of release, and bail are common to the two cases and efficiently
 proceeded before one Judge. The Government’s Request for Detention, a single
 pleading that it captioned with both indictment numbers and filed in both cases,
 further confirms this conclusion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 12th day of June, 2008, caused true and correct copies of the foregoing Response to Government's Reply to Defendant's Notice of Related Cases to be served by hand delivery upon:

Kenneth Julian

Andrew Stolper

Assistant United States Attorney
411 West Fourth Street, 8th Floor
Santa Ana , CA 92701-4599

DATED: June 12, 2008

By: _____


James D. Riddet

Attorney for Defendant